STATE OF MICHIGAN

COURT OF APPEALS

MUSKEGON RIVER YOUTH HOME, INC., Petitioner-Appellant,	UNPUBLISHED January 26, 2012
v	No. 301329 Tax Tribunal
TOWNSHIP OF SYLVAN, Respondent-Appellee.	LC No. 00-324495

Before: BECKERING, P.J., and OWENS and SHAPIRO, JJ.

PER CURIAM.

Petitioner appeals the Tax Tribunal's valuation of its property. Petitioner owns and operates a detention facility and school for male and female juvenile offenders. On May 12, 2008, petitioner filed its petition with the Tax Tribunal, arguing that respondent incorrectly assessed the value of both the male and the female residential buildings on its property for the 2006 tax year. We affirm.

Respondent had assessed the total value of petitioner's property as follows: (1) a true cash value (TCV) of $1,950,400; (2) an assessed value and a state equalized value (SEV) of $975,200; and (3) a taxable value (TV) of $948,336. Petitioner argued that their property's TCV should be $1,100,000, and therefore its SEV and TV should both be $550,000. In its answer, respondent asserted that its assessment of petitioner's property was accurate and included its 2006 property record card. This property record card included the methodology used by respondent's former assessor, Betty Schooley, when she assessed petitioner's property.

The Tax Tribunal set the valuation disclosure deadline for March 2, 2010 and the discovery deadline for May 1, 2010. Petitioner submitted its valuation disclosure on February 25, 2010, but respondent failed to submit its valuation disclosure by the March 2, 2010 deadline. The Tribunal noted that respondent had failed to submit a valuation disclosure and set a show cause hearing for June 14, 2010. In the meantime, petitioner moved for entry of default judgment and did not engage in discovery regarding the previously submitted property record card. When the Tribunal realized that respondent had already filed its property record card back in 2008 with its original answer to the petition, it issued a nunc pro tunc order on June 29, 2010 that recognized that respondent had properly filed its valuation disclosure before the disclosure deadline.

On September 21, 2010, six days before the scheduled hearing before the Tribunal, petitioner asked the Tribunal to issue one subpoena for Schooley, and another for Rosie McKinstry, the Equalization Director for Osceola County. The Tribunal refused to grant these late-requested subpoenas. During the subsequent hearing, petitioner decided to forego the use of its own valuation disclosure and instead attempted to prove its case by discrediting respondent's valuation disclosure.

The Tribunal held that petitioner failed to meet its burden of proof that respondent improperly assessed the property at more than 50 percent of its TCV, that respondent's economic condition factor (ECF) was incorrect, and that respondent incorrectly classified petitioner's buildings. The Tribunal noted that respondent's property record card was the only evidence of valuation presented during the hearing. It stated that the record card was supported by the testimony of Roy Kissinger, respondent's current assessor, who claimed that the ECF was equally applied to all properties throughout the township based upon their class. The Tribunal gave no weight to the testimony of Garry Zachritz, a licensed appraiser, nor to a letter prepared by Zachritz that detailed all of respondent's alleged mistakes in performing petitioner's property assessment. However, the Tribunal was convinced that the assessment was incorrect regarding a nonexistent fire sprinkler system in the female facility, and accordingly adjusted respondent's assessment based on this error. In all other ways, the Tribunal adopted respondent's assessment. The Tribunal ultimately determined the TCV of the property to be $1,937,129, the SEV to be $968,564, and the TV to be $941,882.

Petitioner first argues that the Tribunal's judgment and factual findings were not supported by competent, material, and substantial evidence in the record. We disagree. In the absence of fraud, this Court reviews the Tax Tribunal's decisions for legal errors. *Briggs Tax Service, LLC v Detroit Pub Schs*, 485 Mich 69, 75; 780 NW2d 753 (2010). Any factual findings are conclusive, so long as they are supported by "competent, material, and substantial evidence" in the record. *Id.* "Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence." *Michigan Props, LLC v Meridian Twp*, 292 Mich App 147; ____ NW2d ____, slip op at 3, lv gtd 490 Mich 877 (2011). Even if erroneous, the Tribunal's decision will not be reversed unless the appellant has suffered prejudice as a result. *President Inn Props, LLC v Grand Rapids*, 291 Mich App 625; ____ NW2d ____ (2011), slip op at 7.

Under the Michigan Constitution, general ad valorem property taxes must be uniformly applied throughout the jurisdiction so that the property's assessed value for taxation purposes does not exceed 50 percent of its TCV. Const 1963, Art 9, § 3; *WPW Acquisition Co v City of Troy*, 250 Mich App 287, 298; 646 NW2d 487 (2002). The three most common methods of determining the TCV of a parcel of land are (1) the capitalization of income method, (2) the market value method, and (3) the cost-less-depreciation method. *Id.* The Tribunal must utilize the valuation methodology that most accurately assesses the TCV of the property. *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992). The parties have conceded that the cost-less-depreciation method is the most appropriate method to assess the property in issue here under the circumstances.

Because the Tribunal was not required to accept the valuation evidence presented by either party, it was free to accept or reject any portions of the parties' positions in its efforts to

accurately determine the TCV of the property. *President Inn Properties, LLC*, slip op at 7. The initial burden of proof in proving the TCV of the property rests on petitioner. *Id.* at 3. While this burden may switch to respondent, petitioner will always bear the ultimate burden of persuasion. *Id.*

The Tribunal findings were predicated on competent, material and substantial evidence admitted into the record. The only documents admitted as evidence at the hearing were respondent's property record card, a 2006 Osceola County ECF study, and Zachritz's opinion letter. Respondent's record card, which was the only evidence of valuation that was presented during the hearing, was supported by Kissinger's testimony. While Kissinger admitted that he was unaware of the supporting study justifying the township's ECF, at no time did he actually admit that respondent's ECF was arbitrary and lacked any support. Regarding the Osceola County ECF, petitioner conceded that the 2006 Osceola County study was irrelevant because under the cost-less-depreciation approach, the property's value on December 31, 2005 is used to calculate the 2006 ECF. Moreover, the Tribunal, sitting as the trier of fact, was acting well within its discretion when it decided not to afford the Zachritz letter any weight because it found that its author fell far short of his professional standards and obligations as an assessor in drafting it. See *Kadzban v City of Grandville*, 442 Mich 495, 502; 502 NW2d 299 (1993). Therefore, the record card was the only relevant valuation evidence presented at the hearing.

Petitioner next asserts that the Tribunal erred by failing to independently determine the value of petitioner's property. While the Tribunal is obligated to make its own independent determination of the property's TCV, it is free to adopt the assessed valuation from the authority's tax rolls as its independently determined TCV "when competent and substantial evidence supports doing so." *President Inn Props*, slip op at 8.

Contrary to petitioner's assertion, the Tribunal satisfied its responsibility of making an independent determination. After discussing and weighing all the evidence in the record, the Tribunal was not persuaded that petitioner's property was misclassified or assessed over 50 percent of its TCV. The Tribunal did not automatically adopt respondent's valuation, as evidenced by its modification of the valuation based the recognition that respondent's valuation included a nonexistent sprinkler system in the female facility.

We further conclude that petitioner did not present sufficient evidence at the hearing that respondent's ECF was incorrect for the burden of proof to switch to respondent. Petitioner was only able to demonstrate that Kissinger was unable to recall or was unaware of respondent's foundation for its ECF. Kissinger's lack of knowledge on this matter does not demonstrate that respondent's ECF was incorrect. Further, petitioner offers no legal support for its proposition that merely calling into question Kissinger's knowledge of respondent's basis for its ECF is sufficient to meet petitioner's burden of proof.

Petitioner's argument that respondent should have adopted the Osceola County ECF also has no merit. Kissinger testified that respondent applied the ECF uniformly throughout its jurisdiction and that the ECF presented in the property record card was accurate. Kissinger repeatedly denied that respondent ever used the Osceola County ECF study when calculating respondent's ECF. In addition, as previously noted, the 2006 study was from the incorrect fiscal year. Further, petitioner failed to demonstrate that the economic conditions in the county as a

whole were similar enough to respondent's economic conditions to require respondent to adopt Osceola County's ECF as its own. Because petitioner failed to offer any relevant evidence demonstrating that respondent's ECF was incorrect, petitioner failed to meet its burden of proof and respondent was not required to offer any proof that the ECF study was correct.

Finally, petitioner claims that the Tribunal abused its discretion by issuing an order nunc pro tunc that retroactively reclassified respondent's property record card as its valuation disclosure after the discovery period had closed, and by refusing to issue petitioner's requested subpoenas for additional witnesses. We disagree.

A decision on whether to compel witnesses or issue subpoenas is reviewed for abuse of discretion. *People v Yeoman*, 218 Mich App 406, 413; 554 NW2d 577 (1996). Similarly, a decision to enter a judgment nunc pro tunc to amend or correct an error in a prior order is reviewed for abuse of discretion. *Vioglavich v Vioglavich*, 113 Mich App 376, 386; 317 NW2d 633 (1982). An abuse of discretion occurs when the decision results in an outcome outside "the range of principled outcomes." *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

The request for issuance of the two subpoenas came late in the proceedings. McKinstry's testimony would likely have been irrelevant because she was going to testify as to the irrelevant 2006 Osceola County ECF study. While Schooley's testimony would certainly have been relevant, petitioner did not place her on its witness list when it easily could have done so. Further petitioner should have been aware that Schooley was the original assessor of the property because she prepared respondent's original answer to petitioner's claim before the Board of Review. Given these circumstances and the fact that we review this issue for an abuse of discretion, we conclude that the Tribunal's decision regarding the subpoenas was within the range of principled outcomes.

Similarly, the Tribunal's reclassification of respondent's property record card as its valuation disclosure was not error. The Tribunal was correcting a clear and obvious error, as respondent submitted the property record card back in 2008 with its original answer. Although petitioner claims that the property record card should not have been classified as a valuation disclosure, petitioner fails to offer any legal support for the proposition. Additionally, even if petitioner had detrimentally relied on the earlier order past the discovery closing date, it could easily have taken steps to mitigate this injury, which it did not do.

Affirmed.

/s/ Jane M. Beckering
/s/ Donald S. Owens
/s/ Douglas B. Shapiro